



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 10, 2019

Via electronic mail
Mr. John Kraft

Via electronic mail
Ms. JoAnn Quigley
Supervisor
Wesley Township
21333 West Ballou Road
Wilmington, Illinois 60481
wesleysuper2017@outlook.com

RE: OMA Request for Review – 2018 PAC 53766

Dear Mr. Kraft and Ms. Quigley:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Wesley Township (Township) Board of Trustees (Board) violated OMA's public recital requirement during its June 26, 2018, meeting in connection with its vote to appoint a Township Clerk.

On June 27, 2018, Mr. John Kraft submitted a Request for Review to the Public Access Bureau alleging that during its June 26, 2018, meeting, the Board violated section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.)) by voting to appoint a Township Clerk without first sufficiently informing the public about the action it was taking. Specifically, Mr. Kraft alleged that the voted to appoint "Candidate A," and only notified the public of the identity of Candidate A after the vote.

On July 3, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to Mr. Kraft's OMA allegation and records

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concerning the June 26, 2018, meeting. Having received no response, the Public Access Bureau forwarded the Request for Review to the Board again on October 9, 2018. Again having received no response, the Public Access Bureau forwarded its prior letters and the Request for Review to the Township Supervisor by e-mail on March 15, 2019. The Supervisor responded by e-mail that same day, forwarding copies of the agenda and minutes from the June 26, 2018, meeting; however, the Supervisor did not provide this office with a written response on behalf of the Board. On March 19, 2019, this office sent a copy of the Board's transmittal e-mail to Mr. Kraft and invited his reply; he did not submit a reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2(e) of OMA mandates that "[n]o final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." In *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343, ¶64, 77 N.E.3d 625, 636 (2017), the Illinois Supreme Court held that "under section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." In that case, a school board's public recital of a separation agreement with its superintendent consisted of the school board president stating that the board was considering an agenda item for "approval of a resolution regarding the separation agreement[.]" as well as reciting the entire text of the resolution itself.¹ *Springfield School District*, 2017 IL 120343, ¶81, 77 N.E.3d at 638. The Court concluded that the school board's public recital was sufficient, stating: "The Board president recited the general nature of the matter under consideration—a separation agreement and release—and specific detail sufficient

¹The resolution provided:

"The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the separation agreement and release between Dr. Walter Milton, Jr., and the Board of Education." *Springfield School District*, 2017 IL 120343, ¶81, 77 N.E.3d at 638.

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to identify the particular transaction—the separation agreement was between Dr. Milton and the Board." *Springfield School District*, 2017 IL 120343, ¶83, 77 N.E.3d at 638.

Further, the Court distinguished a decision in which the Illinois Appellate Court concluded that the circuit court improperly dismissed a lawsuit alleging that a park district board violated section 2(e) of OMA by failing to provide a sufficient public recital. *Allen v. Clark County Park District Board of Commissioners*, 2016 IL App (4th) 150963, ¶32-33, 67 N.E.3d 536, 541-42 (2016). As explained by the Court, "[t]he presiding officer of the public body in *Allen* had only "publicly recited the general nature of the two matters being considered: lease rates and revised covenants. He did not, however, provide sufficient other information to inform the public of the specific business being conducted: What type of real or personal property was being leased? What existing covenants were being revised?" *Springfield School District*, 2017 IL 120343, ¶79, 77 N.E.3d at 638.

Prior to the Illinois Supreme Court's decision in *Springfield School District*, the Attorney General issued a binding opinion considering whether a public recital that identified an employee to be dismissed from public service as "Employee A" satisfied section 2(e) of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, issued September 24, 2013. In that matter, the Attorney General concluded that the public recitation provided was insufficient because "the public was deprived of any meaningful information concerning the practical effect of the Board's decision. * * * [W]ithout being informed of the identity of the employee who was the subject of the action the public could not determine whether the Board was dismissing a support staff, a teacher, a principal, or the superintendent of the District." Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, issued September 24, 2013, at 4. Although that opinion was issued prior to *Springfield School District*, it is consistent with that Court's interpretation of public bodies' obligations under section 2(e): the school board's recitation outlined the general nature of the matter under consideration—dismissal of an employee—but failed to recite specific detail sufficient to identify the particular transaction—neither the name nor the job title of the employee being dismissed.

More recently, the Attorney General considered whether a different school board complied with section 2(e) of OMA when it informed the public that it was taking final action on a resolution authorizing a Notice to Remedy to be served on a teacher, but did not identify the teacher to be served. Ill. Att'y Gen. Pub. Acc. Op. No. 19-004, issued May 17, 2019. The Attorney General found that the Board's recitation did not "provide enough information to identify the particular transaction. * * * Because the District has numerous teachers in its employ, a public recital stating that the Board would take action on a resolution authorizing a Notice to Remedy to be served on an unidentified teacher did not provide sufficient detail to identify a particular transaction." Ill. Att'y Gen. Pub. Acc. Op. No. 19-004, issued May 17, 2019, at 6.

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The Request for Review asserts that the Board "voted to appoint 'Candidate A' and only after the vote did they tell the public who 'Candidate A' actually was."² The minutes from the June 26, 2018, meeting document that after the Township Supervisor identified the two candidates who applied as "candidate a and candidate b[,] a motion was made "to appoint candidate A as Township Clerk by Trustee Welchko, second Trustee Smith."³ The minutes state that the Board then voted in favor of the motion, and that "Candidate A – Sarah Norton – was appointed Wesley Township Clerk[]"⁴ and sworn into office.

It is undisputed that the Board's public recital announced the nature of the matter under consideration—the appointment of a new Township Clerk—but did not provide sufficient detail to identify the particular transaction prior to the Board's taking final action—the identity of the person the Board was appointing. Therefore, this office concludes that the Board did not provide an adequate public recital under section 2(e) by merely indicating that it would be taking final action on an unidentified candidate.

Accordingly, for the reasons stated above, the Public Access Bureau has determined that the Board violated section 2(e) of OMA at its June 26, 2018, meeting. Although no action is required to remedy the violation under these circumstances,⁵ we caution the Board that section 2(e) requires the Board to provide sufficient information about the matters on which it is taking final action **prior** to taking that action.

²E-mail from John Kraft to Public Access (June 27, 2018).

³Wesley Township, Special Meeting, June 26, 2018, Minutes 1.

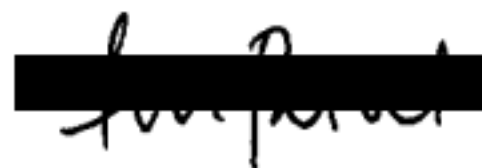
⁴Wesley Township, Special Meeting, June 26, 2018, Minutes 1.

⁵In contrast to Ill. Att'y Gen. Pub. Acc. Op. No. 19-004, in which the school board not only withheld the teacher's name during its public recital, but also did not announce the teacher's name at a later point in the meeting, the available information indicates that the Board in this matter disclosed the name of the appointed Township Clerk immediately after its vote.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. Please contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

A black rectangular redaction box covers the signature of Leah Bartelt. The signature is written in cursive and is partially obscured by the box.

LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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